

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-56336; File No. SR-Amex-2007-35)

August 29, 2007

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change as Modified by Amendment No. 1 Thereto Relating to the Criteria for Securities that Underlie Options Traded on the Exchange

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 5, 2007, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Amex. On August 20, 2007, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to permit the initial and continued listing and trading on the Exchange of options on Index Multiple Exchange Traded Fund Shares (“Multiple Fund Shares”) and Index Inverse Exchange Traded Fund Shares (“Inverse Fund Shares”) (collectively, the “Fund Shares”).

The text of the proposed rule change is available at Amex, the Commission’s Public Reference Room, and [www.amex.com](http://www.amex.com).

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Amendment No. 1 superseded and replaced the original filing in its entirety.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to revise Amex Rules 915 and 916 to enable the listing and trading on the Exchange of options on Multiple Fund Shares and Inverse Fund Shares. Multiple Fund Shares seek to provide investment results, before fees and expenses, that correspond to a specified multiple of the percentage performance on a given day of a particular foreign or domestic stock index. Inverse Fund Shares seek to provide investment results, before fees and expenses, that correspond to the inverse (opposite) of the percentage performance on a given day of a particular foreign or domestic stock index by a specified multiple. Multiple and Inverse Fund Shares differ from traditional exchange-traded fund (“ETFs”) shares in that they do not merely correspond to the performance of a given index, but rather attempt to match a multiple or inverse of such underlying index performance. Current Multiple Fund Shares trading on the Exchange include the ProShares Ultra Funds while the Inverse Fund Shares include the Short Funds and UltraShort Funds.<sup>4</sup>

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<sup>4</sup> See Securities Exchange Act Release Nos. 52553 (October 3, 2005), 70 FR 59100 (October 11, 2005) (SR-Amex-2004-62) (approving the listing and trading of the Ultra Funds and Short Funds) and 54040 (June 23, 2006), 71 FR 37629 (June 30, 2006) (SR-Amex-2006-41) (approving the listing and trading of the UltraShort Funds). The Ultra

In order to achieve investment results that provide either a positive multiple or inverse of the benchmark index, Multiple Fund Shares or Inverse Fund Shares may hold a combination of financial instruments, including, among other things, stock index futures contracts; options on futures; options on securities and indices; equity caps, collars and floors; swap agreements; forward contracts; repurchase agreements; and reverse repurchase agreements (the “Financial Instruments”). The underlying portfolios of Multiple Fund Shares generally will hold at least 85% of their assets in the component securities of the underlying relevant benchmark index. The remainder of any assets are devoted to Financial Instruments that are intended to create the additional needed exposure to such Underlying Index necessary to pursue its investment objective. Normally, 100% of the value of the underlying portfolios of Inverse Fund Shares will be devoted to Financial Instruments and money market instruments, including U.S. government securities and repurchase agreements (the “Money Market Instruments”).

Currently, Commentary .06 to Amex Rule 915 provides securities deemed appropriate for options trading shall include shares or other securities (“Exchange-Traded Fund Shares”) that are principally traded on a national securities exchange or through the facilities of a national securities association and defined as an “NMS stock” under Rule 600 of Regulation NMS, and that (i) represent an interest in a registered investment company organized as an open-end management investment company, a unit investment trust or a similar entity which holds securities constituting or otherwise based on or representing an investment in an index or

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Funds are expected to gain, on a percentage basis, approximately twice (200%) as much as the underlying benchmark index and should lose approximately twice (200%) as much as the underlying benchmark index when such prices decline. The Short Funds are expected to achieve investment results, before fees and expenses, that correspond to the inverse or opposite of the daily performance (-100%) of an underlying benchmark index. Lastly, the UltraShort Funds are expected to achieve investment results, before fees and expenses that correspond to twice the inverse or opposite of the daily performance (-200%) of the underlying benchmark index.

portfolio of securities; (ii) represent interest in a trust or other similar entity that holds a specified non-U.S. currency and/or currencies deposited with the trust or similar entity when aggregated in some specified minimum number may be surrendered to the trust by the beneficial owner to receive the specified non-U.S. currency and/or currencies and pays the beneficial owner interest and other distributions on the deposited non-U.S. currency and/or currencies, if any, declared and paid by the trust; or (iii) represent commodity pool interests principally engaged, directly or indirectly, in holding and/or managing portfolios or baskets of securities, commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or non-U.S. currency (“Commodity Pool ETFs”).

The Exchange proposes to amend Commentary .06 to Amex Rule 915 to expand the type of options to include the listing and trading of options based on Multiple Fund Shares and Inverse Fund Shares<sup>5</sup> that may hold or invest in any combination of securities, Financial Instruments and/or Money Market Instruments. Multiple Fund Shares and Inverse Fund Shares will continue to otherwise satisfy the listing standards in Commentary .06 to Amex Rule 915. In addition, the Exchange proposes to remove the reference to a “national securities association” in Commentary .06 to Amex Rule 915.

As set forth in proposed amended Commentary .06 to Amex Rule 915, Multiple Fund Shares and Inverse Fund Shares must be traded on a national securities exchange and must be an “NMS stock” as defined under Rule 600 of Regulation NMS. In addition, Multiple Fund Shares and Inverse Fund Shares must meet either: (i) the criteria and guidelines under Commentary .01 to Amex Rule 915; or (ii) be available for creation or redemption each business day in cash or in kind from the investment company at a price related to net asset value. In addition, the

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<sup>5</sup> See Amex Rule 1000A—AEMI(b)(2).

investment company shall provide that shares may be created even though some or all of the securities and/or cash (in lieu of the Financial Instruments) needed to be deposited have not been received by the investment company, provided the authorized creation participant has undertaken to deliver the shares and/or cash as soon as possible and such undertaking has been secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the fund which underlies the option as described in the prospectus.

The current continuing or maintenance listing standards for options on Exchange Traded Fund Shares will continue to apply.

The Exchange proposes to amend Commentary .07 to Amex Rule 916 to indicate that the index or portfolio may consist of securities, Financial Instruments and/or Money Market Instruments. The Exchange also seeks to delete references to “national market securities,” “national securities association”, and “national market association” set forth in Commentary .07 to Amex Rule 916.

Under the applicable continued listing criteria in Commentary .07 to Amex Rule 916, options on Fund Shares may be subject to the suspension of opening transactions as follows: (1) following the initial twelve-month period beginning upon the commencement of trading of the Fund Shares, there are fewer than 50 record and/or beneficial holders of the Fund Shares for 30 or more consecutive trading days; (2) the value of the index, non-U.S. currency, portfolio of commodities including commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities, or portfolio of securities and/or Financial Instruments on which the Fund Shares are based is no longer calculated or available; or (3) such other event occurs or condition exists that in the opinion of the Exchange makes further dealing on the Exchange inadvisable. Additionally, the Fund Shares shall not be

deemed to meet the requirements for continued approval, and the Exchange shall not open for trading any additional series of option contracts of the class covering such Multiple Fund Shares or Inverse Fund Shares, if the Shares are halted from trading on their primary market or if the Shares are delisted in accordance with the terms of Amex Rule 916 or the value of the index or portfolio on which the Shares are based is no longer calculated or available.

The expansion of the types of investments that may be held by Multiple Fund Shares or Inverse Fund Shares under Commentary .06 to Amex Rule 915 will not have any effect on the rules pertaining to position and exercise limits<sup>6</sup> or margin.<sup>7</sup>

This proposal is necessary to enable the Exchange to list and trade options on the shares of the Ultra Fund, Short Fund and UltraShort Fund of the ProShares Trust.<sup>8</sup> We believe the ability to trade options on Multiple and Inverse Fund Shares will provide investors with greater risk management tools. The proposed amendment to the Exchange's listing criteria for options on Exchange Traded Fund Shares is necessary to ensure that the Exchange will be able to list options on the Funds of the ProShares Trust as well as other Multiple Fund Shares or Inverse Fund Shares that may be introduced in the future.

The Exchange in this proposal also seeks to add "reverse repurchase agreements" within the rule text of Amex Rule 1000A—AEMI(b)(2)(ii) in order to correct the definition of Financial Instruments.

The Exchange represents that its existing surveillance procedures applicable to trading in options are adequate to properly monitor the trading in Multiple Fund Shares options and Inverse Fund Shares options.

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<sup>6</sup> See Amex Rules 904 and 905.

<sup>7</sup> See Amex Rule 462.

<sup>8</sup> See supra, note 4.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>10</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- (A) by order approve such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the

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<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form <http://www.sec.gov/rules/sro.shtml>; or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-Amex-2007-35 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549–1090.

All submissions should refer to File No. SR-Amex-2007-35. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site at <http://www.sec.gov/rules/sro.shtml>. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information



that you wish to make available publicly. All submissions should refer to File No. SR-Amex-2007-35 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).